



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

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ATTORNEY GENERAL**

September 18, 1961

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Capitol Station  
Austin, Texas

Opinion No. WW-1140

Re: Three questions relating  
to Sec. 2 of Senate Bill  
No. 10, Acts 1961, 57th  
Leg., R.S., ch. 371, p.  
817, which adds a new  
Section No. (6a) to Art.  
9.13 of Title 122A, Tax.-  
Gen., R.C.S., which is  
the Motor Fuel Tax Law.

Dear Mr. Calvert:

You request the opinion of the Attorney General in answer to three questions relating to Senate Bill No. 10, Acts 1961, R.S., 57th Legislature, which is more fully referenced in the caption of this opinion.

Your questions and our answers are as follows:

Your first question is:

"Will the provisions of Section 7(a) of Article VIII of the Constitution of the State of Texas permit the allocation and deposit of unclaimed aircraft fuel tax refunds to the Texas Available School Fund and to the Texas Aeronautics Commission Fund for the purposes provided in Section (6a), cited above?"

Our answer is "Yes".

Your second question is:

". . .will persons who are entitled to file claims for refund of the tax paid on motor fuel used in aircraft be required to file such claims within six months to comply with the six months limitation period indicated in Section (6a) of Senate Bill 10, or will such persons be entitled to file claim within the period of one year as provided in Subsection (6) of Article 9.13, as amended by House Bill 129?"

House Bill 129 to which you refer was passed at the same Regular Session of the Legislature which passed Senate Bill No. 10. It is chapter 453, at page 1026 of the Acts of that Session. Our answer to the second question is that claims must be filed within six months, as required by Section (6a) of Senate Bill 10.

Your third question, stated in alternate inquiries which we designate as subdivisions (a) and (b) is as follows:

"(a) Is the Comptroller correct in construing Senate Bill No. 10, as intended by the Legislature, to mean that the Comptroller must first receive the monthly reports and schedules, required in Section 5 above, from the distributors showing complete information of all sales of motor fuel marketed by such distributors as aviation or aircraft fuel, from which to determine the total quantities available for refund during the month reported, and then must wait until the limitation for filing refund claims on the purchases shown has expired (six months or one year whichever you determine to be the law) before making the determination of the number of gallons used in aircraft upon which refund of the tax thereon has not been made and against which a limitation has run for filing claim for refund of said tax as provided in Section (6a) above cited?

or,

"(b) does the provision in Section (6a) stating, 'Each month the Comptroller. . . shall determine as accurately as possible the number of such gallons. . . ' require or authorize the Comptroller to make such determination as accurately as possible -- which would necessarily be an estimate -- and make the allocations each month after the effective date of the Act, subject to correction on allocations made after the limitation has run?"

Our answer to this third question is that the Comptroller is to follow the procedure stated in subdivision (a) of this question.

Provisions of the Texas Constitution  
and Statutes under Consideration

The pertinent portion of Sec. 7-a of Art. VIII of the Texas Constitution reads as follows:

"Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads; and for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund under existing law; provided, however, that one-fourth (1/4) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund;. . . ."

Section 1 of this Senate Bill No. 10 adds to the Motor Fuel Tax Law a new Section (5) to Art. 9.03, Title 122A, Tax.-Gen., R.C.S. This new Sec. (5) reads as follows:

"Section 1. That Section 5 be enacted and added as an amendment to House Bill No. 11, Acts 1959, 56th Legislature, 3rd Called Session, Chapter 9, (under Chapter 1) Title 122A, Motor Fuel Tax (Article 9.03 by adding a Section 5 thereto) the same to read:

"(5) Reports. Every distributor selling motor fuel in this state for use in aircraft, or for resale for such purpose, shall attach to each monthly report required by law to be filed with the Comptroller by each distributor a schedule which shall become a part of such report and shall show complete

information of all sales of motor fuel marketed by such distributor as aviation or aircraft motor fuel in such form as the Comptroller may require. The Comptroller is hereby authorized to prescribe records to be kept and reports to be made by distributors and refund dealers in whatever manner and form he deems necessary to determine the amount of motor fuel, used or sold for use in aircraft on which claim for refund of the tax is not made, and the failure or refusal to keep any such records or to make any such reports shall constitute cause for the cancellation of the permit or refund of dealer's license of those who fail or refuse to comply therewith."

Section 2 of this Senate Bill No. 10 adds to the Motor Fuel Tax Law a new Section (6a) to Art. 9.13, Title 122A, Tax.-Gen., R.C.S. This new Sec. (6a) reads as follows:

"Sec. 2. That Section (6a) be enacted and added as an amendment to Article 9.13, House Bill No. 11, Acts 1959, 56th Legislature, 3rd Called Session, Chapter 9, (under Chapter 1) Title 122A, Motor Fuel Tax, the same to read:

"(6a) Allocation of unclaimed aircraft fuel refunds to Available School Fund and to Texas Aeronautics Commission Fund. Each month the Comptroller, after making the deductions for refund purposes as provided in Article 9.13, Section (13) of this Chapter, shall determine as accurately as possible the number of gallons of motor fuel used in aircraft upon which the motor fuel tax has been paid to this state, and upon which refund of the tax thereon has not been made and against which a six (6) months limitation has run for filing claim for refund of said tax (called "unclaimed refunds"), and from the number of gallons so determined the Comptroller shall compute the amount of taxes that would have been refunded under the law had claims for same been filed in accordance with the law, and shall allocate and deposit such unclaimed refunds as follows: twenty-five per cent (25%) of such revenues shall be allocated, deposited, and set aside in the State Treasury placed to the credit of the

Available School Fund. The remaining seventy-five per cent (75%) of such revenues shall be allocated, deposited, and set aside in the State Treasury in a special fund to be called the Texas Aeronautics Commission Fund and the same shall be credited to, and is hereby appropriated to, the Texas Aeronautics Commission for the purposes set forth in this Section, and which said Texas Aeronautics Commission Fund shall be administered by the Texas Aeronautics Commission, together with any other funds appropriated by the Legislature, for the support, maintenance and operation of the Texas Aeronautics Commission in the performance of its safety and all of its other functions, duties and responsibilities as may be now or hereafter delegated to such Commission as prescribed by law, and also for the payment of the Commissioners, the director, assistant director, the staff, and for equipment and supplies, including aircraft and automotive equipment as authorized by law. Any unexpended portion of the Texas Aeronautics Commission Fund allocated and placed to the credit of the Texas Aeronautics Commission, as herein prescribed, not used, and on hand, at the end of each fiscal year shall be returned to the Comptroller of Public Accounts and he shall place the same to the credit of the Texas Aeronautics Commission Fund for the use of the Texas Aeronautics Commission for the purposes stated herein."

House Bill No. 129, Acts 1961, 57th Legislature, Regular Session, chapter 453, at page 1026, amends Subsection (6) of said Art. 9.13, Title 122A, Tax.-Gen., R.C.S. This subsection (6) in its pertinent portion as so amended reads as follows:

"(6) Any person entitled to file claim for tax refund under the terms of this Article shall file such claim with the Comptroller on a form prescribed by the Comptroller within one (1) year from the date the motor fuel was delivered to him, . . . and no refund of tax shall ever be made where it appears from the invoice of exemption or other evidence submitted, that the sale or delivery of the motor fuel was made more than one (1) year prior to the date the refund claim was actually received in the Comptroller's office. . . ."

We note also that the same Regular Session of the 57th Legislature enlarged both the personnel and the powers and duties of the Texas Aeronautics Commission by Senate Bill No. 76, Acts 1961, chapter 379, page 850.

Also, we mention that Art. 9.25 of Title 122A, as amended by Sec. 5 of this Senate Bill No. 10 was subsequently amended by ARTICLE V of House Bill No. 20, Acts 1961, 57th Legislature, First Called Session, Chapter 24, page 71 (at page 102). Your inquiries which are the subject of this opinion relate only to claims for refunds of the motor fuel tax paid on fuel purchased for use in aircraft. Art. 9.25 relates to allocation of the remainder of the motor fuel tax collected after making deductions for refund purposes and for enforcement of the Motor Fuel Tax Act. This Art. 9.25 as amended by this House Bill No. 20 states, in part:

"Each month the Comptroller of Public Accounts shall, after making the deductions for refund purposes as provided in Article 9.13 of this Chapter, and for the enforcement of the provisions of this Chapter, allocate and deposit the remainder of the taxes collected under the provisions of this Chapter in the proportions as follows: . . ." (Under-scoring added).

We find no conflict between the provisions of this House Bill 20 and the provisions of new Section (6a) to Art. 9.13, Title 122A, which is the subject of your inquiries.

#### Discussion of Questions Asked

First Question: Section 7-a of Art. VIII of our Texas Constitution requires that the net revenues from the Motor Fuel Tax ". . . on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for. . ." (under-scoring added) specified purposes relating to the construction and policing of the public roadways and for the payment of specified indebtedness incident to public roads. This Sec. 7-a further provides that 1/4th of this net revenue shall be allocated to the Available School Fund.

Section (6a) added to Art. 9.13 by Sec. 2 of Senate Bill No. 10, which we are considering, allocates only unclaimed aircraft fuel refunds, and in addition allocates one-fourth (1/4) of these revenues to the Available School Fund. We find no conflict between Sec. 7-a of Art. VIII of the Constitution and this new Section (6a) of Art. 9.13.

Second Question: We believe that Section (5) added to Art. 9.03 of the Motor Fuel Tax Law, and Section (6a) added to Art. 9.13 of that law, by Sections 1 and 2, respectively of the Senate Bill No. 10, manifest the legislative intent that claims for refund of the motor fuel tax paid on such fuel used in aircraft are to be filed as required by the more specific provisions of new Sec. (6a) of Art. 9.13 (added by Sec. 2 of S.B. 10) instead of by the general provisions of amended Subsection (6) of this Art. 9.13 (as amended by H.B. 129). We do not consider the fact that House Bill 129 was passed by the Legislature one day subsequent to passage of Senate Bill No. 10 to make the general provisions of House Bill 129 control over the specific provisions of Senate Bill 10.

Section (5) of Art. 9.03 (being Section 1 of this Senate Bill No. 10) requires each distributor selling motor fuel for use in aircraft to file each month a special schedule prescribed by the State Comptroller to enable the Comptroller ". . . to determine the amount of motor fuel, used or sold for use in aircraft on which claim for refund of the tax is not made. . . ." This schedule is required only of fuel the ultimate use of which is for use in aircraft. Also, new Section (6a) of Art. 9.13 (being Sec. 2 of this Senate Bill No. 10) relates only to fuel used in aircraft.

"It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute, whether it was passed before or after such general enactment. . . and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication'." Hallum v. Texas Liquor Control Board, 166 S.W.2d 175 (Civ.App. 1942, error ref.). Also: Fortinberry v. State, ex.rel. Myers, 283 S.W. 146 (Comm.App. 1926); Culver v. Miers, 220 S.W.2d 200 (Civ.App. 1949, error ref.); Wright v. Broeter, 145 Tex. 142, 196 S.W.2d 82 (1946); 39 Tex.Jur. 149-151, Statutes, Sec. 81-82.

Third Question: We believe that the Legislature intended by the provisions of new Sec. (6a) added to Art. 9.13 by Sec. 2 of Senate Bill 10 which read:

" . . . and against which a six (6) months limitation has run for filing claim for refund of said tax (called 'unclaimed refunds') . . . "

and

" . . . and from the number of gallons so determined the Comptroller shall compute the amount of taxes that would have been refunded under the law had claims for same been filed in accordance with the law, . . . " (Under-scoring added)

that the Comptroller first receive the monthly reports and schedules required in new Section (5) of Art. 9.03 (being Section 1 of this Senate Bill No. 10) and then to wait until the six (6) months limitation set forth in this new Section (6a) of Art. 9.13 has expired before he makes determination each month of the quantity of fuel used in aircraft and upon which a claim for refund of the taxes has not been made for the immediately preceding six months.

#### S U M M A R Y

Sec. 2 of Senate Bill No. 10, Acts 1961, R.S. (codified as Sec. (6a) of Art. 9.13, Title 122A, R.C.S.):

- 1) Is constitutional;
- 2) Requires claims for refund of the motor fuel tax paid on fuel used in aircraft to be filed within a six months limitation period;
- 3) Requires the Comptroller to wait until this six months limitation period has expired before he determines each month the amount of motor fuel used in aircraft upon which a claim for refund of the motor fuel tax has not been made for the immediately preceding six months.

Yours very truly,

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Attorney General of Texas

By

  
W. E. Allen

Assistant Attorney General



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